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November 12, 2014

Via E-mail and ECF

The Honorable Shelley C. Chapman,
United States Bankruptcy Judge,
Southern District of New York,
One Bowling Green,
New York, New York 10004-1408.

Re: *In re Lehman Brothers Holdings Inc., et al.*, 08-13555; *Lehman Brothers Holdings Inc. and Lehman Brothers Special Financing Inc. v. Giants Stadium LLC*, 13-01554 (Bankr. S.D.N.Y.)

Dear Judge Chapman:

In light of the commencement of depositions on December 8, 2014, and in accordance with Local Rule 7007-1(b), Giants Stadium reluctantly seeks the Court's intervention to compel Debtors' production of several categories of documents responsive to Giants Stadium's long-outstanding requests for documents relevant to the parties' claims and defenses in the above-referenced actions ("Actions"). (*See* Ex. A (attached hereto), No. 08-13555, ECF No. 31105.)¹

In 2007, Giants Stadium and Lehman Brothers Special Financing ("LBSF") entered into two materially identical interest rate swap transactions ("Swaps") designed to hedge Giants Stadium's interest rate exposure to the \$408 million of auction-rate securities ("ARS") that Giants Stadium issued to help finance construction of New Meadowlands Stadium. (Response to Debtors' Objection (No. 08-13555, ECF No. 46463) ("Response") ¶¶ 1, 5, 23.) Under the Swaps, Giants Stadium paid LBSF a fixed rate of interest, and LBSF paid Giants Stadium the actual rate of interest on the ARS, as generated by periodic auctions. (*Id.* ¶¶ 4, 21.) This hedge became extremely valuable to Giants Stadium over the course of the market turmoil in 2007 and 2008. (*Id.* ¶ 35.)

Lehman Brothers Holdings Inc.'s September 15, 2008 bankruptcy filing, however, constituted a default under the Swaps; Giants Stadium thereafter designated September 18, 2008 as the "Early Termination Date" of the Swaps (the relevant valuation date under the agreements). (*Id.* ¶ 37.) After being told by LBSF that there was "nobody here at Lehman" to solicit "Reference-Market makers" to provide a legally binding bid to value the Swaps, Giants Stadium was obligated to, and did, calculate its "Loss" as of the Early Termination Date. (*Id.* ¶¶ 38-40.) Giants Stadium's calculation equaled the approximately \$301 million Giants Stadium seeks in the operative proofs of claim filed on October 29, 2009 ("Claims").

¹ As the attached e-mail and written correspondence demonstrate, Debtors have not responded to Giants Stadium's: (i) e-mail dated August 8, 2013; (ii) letter dated December 12, 2013; (iii) letter dated May 23, 2014; or (iv) letter dated October 2, 2014. (Exs. B-E.) Despite these extensive requests by Giants Stadium, Debtors have failed to cure—or even defend—fundamental and obvious deficiencies in their production. Debtors have also ignored Giants Stadium's requests to meet and confer regarding the issues raised in this letter.

The Honorable Shelley C. Chapman

-2-

Debtors should be ordered to produce the following documents relevant to the parties' claims and defenses in the Actions:

1. Valuation Methodologies. Debtors contend that Giants Stadium's Loss calculation was not "commercially reasonable" for various reasons, including that Giants Stadium "valued the Swaps employing improper assumptions." (Objection (No. 08-13555, ECF No. 46050) ¶ 40.) To defend against this contention, Giants Stadium has requested basic information about how *Debtors* valued similar instruments. (*See* Ex. A (Request Nos. 10, 17).) Debtors have not only refused to produce all documents responsive to these requests, they have failed to identify basic information about the requests' subject matters, such as: the number of actual bond rate swaps LBSF entered into, how many were terminated pre-bankruptcy, and how many were terminated post-bankruptcy. (Exs. D-E.) The Court should order Debtors to produce all documents responsive to these requests.

2. Redactions For Responsiveness. Debtors have redacted over 3,200 documents in their 9,800-document production on grounds other than the attorney-client privilege. Debtors have, for example, extensively redacted an August 2007 e-mail chain reflecting discussions among Lehman employees about an effort to locate "bank liquidity" that would permit Lehman to request that Giants Stadium refinance the bonds, but "almost all these banks [were] nervous around the current markets." (Ex. F-1.) Debtors have also redacted, nearly in their entirety, a number of spreadsheets, including a spreadsheet reflecting Lehman's internal valuation of the "Net Termination Amount payable by Lehman" on Giants Stadium's Claims. (Ex. F-7). Worse, Debtors—deviating from their practice with respect to other spreadsheets—have not produced these Excel files in native format, *i.e.*, as they were kept in the usual course of business, thereby concealing the data and formulae revealing how Debtors calculated, for example, the "Net Termination Amount payable by Lehman." Giants Stadium respectfully requests that the Court order Debtors to produce unredacted versions (in native format for Excel files) of the documents identified in Appendix A hereto.²

3. Custodians and Other Deficiencies. With no explanation, Debtors have refused to search for responsive, non-privileged documents in centralized files or informational databases, and the custodial files of certain custodians involved in valuing the ARS. (*See, e.g.*, Ex. E.) This Court should order Debtors to search for and produce all responsive, non-privileged documents contained in centralized files, information databases, and the custodial files identified in Exhibit E. In addition, Debtors have failed to produce (i) dozens of attachments corresponding to documents in their production, (ii) documents reflecting the markups of various Word documents, and (iii) hard copies of the termination notices delivered to LBSF on September 18, 2008. (*See id.*) Debtors should be ordered to remedy these basic deficiencies in their production.

² Appendix A is a small sample of Debtors' extensive and inappropriate responsiveness redactions. Giants Stadium reserves the right to seek an order compelling the production of other documents redacted on grounds other than privilege, but Giants Stadium has highlighted these seven documents to help demonstrate to the Court the concerns at issue here.

The Honorable Shelley C. Chapman

-3-

For the foregoing reasons, Giants Stadium respectfully requests leave to file a motion to compel the production of the responsive documents described herein.

Respectfully,

/s/ Bruce Clark

Bruce E. Clark

(Enclosures)

cc: Counsel of record

APPENDIX A

Exhibit No.	Beginning Bates Number	Date of Document	Description
F-1	LBSF00176679	08/15/2007	E-mail chain discussing Lehman's effort to locate "bank liquidity" to permit Lehman to request a refinancing of the ARS
F-2	LBSF00065139	11/30/2007	E-mail concerning "Municipals Report 11/28" and attaching an internal spreadsheet—redacted nearly in its entirety—reflecting "data downloaded from Lehman Risk"
F-3	LBSF00038188	01/11/2008	Internal spreadsheet entitled "Lehman Brothers' Tax-Exempt Auction Portfolio with Corporate Obligors—Summary of Outstanding Auction Programs by Corporate Obligor"
F-4	LBSF00025111	02/29/2008	E-mail chain concerning "Q1 Bal Sht Forecast," including statement that "we are still pending the Giants markdown and more [redacted] markdowns in [redacted]"
F-5	LBSF00029341	06/20/2008	E-mail chain "Re: Giants" including statement that "Do not remember what agreement was, [redacted]"
F-6	LBSF00513944	08/25/2008	E-mail chain with redacted subject line, including statement: "Do not add Giants [redacted] until I get sign off from Andy"
F-7	LBSF00329346	07/15/2009	Internal spreadsheet reflecting an internal valuation of \$254,631,977 "USD Net Termination Amount payable by Lehman" to Giants Stadium, but redacting all information and failing to provide the underlying data showing how Debtors' calculated the amount